

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON HEALTH

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Start: 1:10 pm
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HELD AT: Council Chambers
City Hall

B E F O R E:
MARIA DEL CARMEN ARROYO
Chairperson

COUNCIL MEMBERS:
Peter F. Vallone, Jr.
James F. Gennaro
Vincent J. Gentile
Joel Rivera
Helen D. Foster
Deborah Rose
Albert Vann
James G. Van Bramer
Rosie Mendez

A P P E A R A N C E S (CONTINUED)

Nancy Clark
Assistant Commissioner of the Bureau of Environmental
Disease Prevention
NYC Department of Health and Mental Hygiene

Georgia Vasilopoulos
P.S. 122

Robin Mann
P.S. 122

Steven Rosario
Steven Risotto
American Chemistry Council

Dr. Steven Hentges
American Chemistry Council

Steven Risotto
Senior Director for Phthalate Esters
American Chemistry Council

Joan Lawrence
Vice President of Safety Standards and Government
Affairs
Toy Industry Association

Wendy Rubinstein
Executive Board member
Mount Sinai's Children's Environmental Health Center

Mike Schade
Center for Health Environment, and Justice

Kristina Jung
WE ACT

Miranda Massie
Litigation Director
New York Lawyers for the Public Interest

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SERGEANT-AT-ARMS: Quiet, please.

CHAIRPERSON ARROYO: Good
afternoon. Is this on? Yeah. Good afternoon, my
names is Maria Carmen Arroyo, Chair of the
Committee on Health here in the City Council, and
today the Committee will be considering--

[Off mic]

CHAIRPERSON ARROYO: I'm sorry?

[Off mic]

CHAIRPERSON ARROYO: It's too loud,
too low?

[Off mic]

SERGEANT-AT-ARMS: It's on, right?

CHAIRPERSON ARROYO: Oh.

MALE VOICE: Sorry.

CHAIRPERSON ARROYO: Okay. It's
on, you're going to make me do that again? Jerry?

[Off mic]

CHAIRPERSON ARROYO: Good
afternoon, my name is Maria Carmen Arroyo, Chair
of the Committee on Health. Today, the Committee
will be considering Introduction 175, sponsored by
Council Member Peter Vallone, Jr., who is here
with us and we will hear from him in a few

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2 minutes, Council Member Gennaro, and Gentile, in
3 relations to BPA and the effects on the human
4 body.

5 BPA is a chemical used to make
6 plastics and resins and is commonly found in
7 household items like food and beverage containers,
8 baby bottles, and toys, BPA is also found in the
9 inner lining of many canned goods. There has been
10 a good deal of concern over the safety of BPA,
11 particularly for young children. A study by the
12 Center of Disease Control and Prevention found
13 widespread exposure to BPA in the population. BPA
14 can be absorbed by the body through eating or
15 drinking from containers or cans made with BPA and
16 through direct oral contact. Many of the studies
17 that reviewed BPA valuated the health effects
18 found in mice and rats. Some of the adverse
19 health effects noted in animals included delayed
20 onset of puberty, reduced size, lower weight, and
21 survival.

22 There are some that dispute the
23 correlation between BPA exposure and adverse
24 health effects. The criticism includes that the
25 results in animals do not necessarily translate to

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2 humans, that the animals are exposed to greater
3 amounts of BPA, and that some of the studies have
4 not been replicated. While there is disagreement
5 in the scientific and medical community about the
6 health effects of BPA, the federal government is
7 investing \$30 million to study these effects and
8 the industry is voluntarily halting production of
9 BPA baby bottles and infant feeding cups.

10 The second chemical that this bill
11 regulates is phthalates. Phthalates are
12 industrial compounds used in the manufacture of
13 plastics to add flexibility and durability.
14 Phthalates are commonly found in children's toys,
15 personal care products, plastic bags, and medical
16 tubing. Similar to BPA, phthalates have been the
17 source of many studies to determine whether there
18 is a correlation between exposure and adverse
19 health effects. Several studies in lab animals
20 uncover offsprings that weigh less and experience
21 reproductive organ deficiencies. Some consider
22 phthalates an endocrine disruptor, affecting the
23 hormones, and these individuals worry that
24 phthalates will negatively impact the individual's
25 reproductive system.

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2 Once again, some questions whether
3 the health outcomes in lab animals translate to
4 humans, given the differences in bodies and the
5 way the human body releases chemicals exists.
6 Despite this, further studies have focused on
7 whether there are connections between phthalate
8 exposure and obesity, insulin resistance, low
9 birth weights, and even Attention Deficit and
10 Hyperactivity Disorder.

11 Today, we will hear from medical
12 professionals, scientists, environmental health
13 advocates, parents, and some students that are
14 joining us as our guests here today, and industry
15 representatives to assess the current state of BPA
16 in phthalates and consider our legislation, Intro
17 175.

18 I want to thank the Committee
19 staff, Joe Mancino, our policy analyst, Adira
20 Siman, who is legal counsel, for their work and
21 making me sound so smart with this opening
22 statement. I also want to recognize my colleagues
23 who are here from the Health Committee and those
24 who will be joining us. We have competing
25 hearings and budget briefings going on

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2 simultaneously, but here we're joined by the
3 former chair of this Committee Council Member Joel
4 Rivera and the prime sponsor of this legislation,
5 Council Member Peter Vallone. And now I defer to
6 Council Member Vallone.

7 COUNCIL MEMBER VALLONE: Thank you,
8 Madam Chair, and thank you very much for having
9 this hearing. There are much easier topics that
10 you could've chose to tackle, especially your
11 staff that made both of us, well hopefully will
12 make me sound good, but you did this and you did
13 it rather quickly and I want to thank you for
14 that.

15 And I did sponsor this bill because
16 it's something that's very important to me, but
17 one of the groups that brought it to my attention
18 originally is here with us today and that's the
19 Project Citizen class from P.S. 122 and they
20 actually gave me a full-blown presentation last
21 week on this, which I wish they could do the whole
22 presentation for you guys, it would just blow you
23 away, they know 10 times more than we know on this
24 topic, and they're going to testify later on. But
25 in fact Project Citizen last year, a different

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2 group of kids, but the same teacher, Rebecca
3 Victoros, and the same class in the same school
4 was the force behind the changing the [off mic]
5 bell from three minutes to one minute outside
6 schools, they're the ones who pushed that bill and
7 got that done. And now this year's class is
8 pushing this bill and some other environmental
9 bills that they're very concerned about. So I
10 want to welcome you guys here and can't wait to
11 hear from you again.

12 On May 6, the president's cancer
13 panel issued a report deploring the rising amount
14 of carcinogens released into our environment,
15 including BPA, and calling for much more stringent
16 regulations and a wider awareness of the dangers,
17 and that's what we're doing here today, we're
18 looking for more stringent regulations, we're
19 making people aware of the toxins in their air and
20 their food and in their plastics. What's
21 concerned me for a long time is the cumulative
22 effect of all of these toxins in our foods, in our
23 plastics, the radiation from cell phone towers,
24 which I've been at the forefront of, the mercury
25 in our fish, the air pollution that we breathe, at

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2 every level we're subjected to toxins, and it's
3 impossible to test the effect of all of those
4 toxins on a body. So what we need to do is act
5 against every individual one at every chance we
6 get, at every level of government, and that's what
7 we're doing here today.

8 Now there, as you said, many tests
9 that show the dangers of phthalates and BPA and
10 some don't and that's why it's inconclusive, but I
11 think one scientist said about the only way--
12 that's the scientist now coming in--the only way
13 to get conclusive evidence would be to give BPAs
14 and phthalates to one group of kids, keep another
15 group away, and then wait 30 years. That's not
16 going to happen, we're not going to wait 30 years,
17 and we're not going to wait for the federal
18 government to take any more action on this because
19 we did not wait in the past when it comes to trans
20 fats. They still have not acted on trans fats, we
21 took the first step here in New York City, I wrote
22 the law that banned trans fats and everyone made
23 fun of me and said that I was going to take away
24 your cupcakes and your french fries and nothing
25 tastes any different and now the entire world is

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2 following us as an example when it comes to trans
3 fats, and we're going to set that same sort of
4 example, hopefully, when it comes to BPAs and
5 phthalates.

6 There is a federal law when it
7 comes to phthalates, ours expands that and gives
8 us the opportunity to enforce it on a local level.
9 There is no federal law when it comes to BPAs,
10 although several other states and municipalities
11 have acted, the ban exists in Vermont,
12 Connecticut, Wisconsin, Washington, Maryland,
13 Minnesota, cities of Chicago, other counties here
14 in New York state, so there is a precedent for
15 this.

16 And I don't want to talk any longer
17 because I want to hear from the experts on either
18 side of the issue and especially from our kids.
19 So thank you again, Madam Chair, for this
20 opportunity.

21 CHAIRPERSON ARROYO: Thank you,
22 Council Member Vallone. I'd like to acknowledge
23 we've been joined by Council Member Helen Diane
24 Foster from the Bronx, welcome, Council Member.

25 And we will start now with our

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2 first panel, the Department of Health is here
3 Assistant Commissioner Nancy Clark, who will
4 introduce herself for the record, and her
5 colleague sitting with her. Thank you, you may
6 begin.

7 NANCY CLARK: Is this thing on, is
8 it on?

9 CHAIRPERSON ARROYO: Yeah.

10 NANCY CLARK: Yeah, okay, great.

11 [Off mic]

12 NANCY CLARK: Good morning or good
13 afternoon, Chairperson Arroyo and members of the
14 Health Committee, my name is Nancy Clark and I'm
15 the Assistant Commissioner of the Bureau of
16 Environmental Disease Prevention at the New York
17 City Department of Health and Mental Hygiene.
18 With me today is Dr. Paramita Jorge, Bureau
19 Coordinator for Environmental Risk Assessment. On
20 behalf of Commissioner Tom Farley, I'd like to
21 thank you for the opportunity to testify regarding
22 Intro 175.

23 In my testimony today, I'd like to
24 provide an overview of what we know about the
25 potential human health effects of bisphenol A, or

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2 BPA, and phthalates, a summary of the federal
3 Consumer Product Safety Information Act of 2008,
4 the CPSIA, and the challenges of local regulations
5 aimed at limiting the amount of these substances
6 in children's products. Bisphenol A, or BPA, is
7 an industrial chemical used to make a hard, clear
8 plastic known as polycarbonate, which has been
9 used in many consumer products, including reusable
10 water bottles and baby bottles. BPA is also found
11 in epoxy resins which act as a protective lining
12 on the inside of metal food and beverage cans.
13 These uses of BPA are subject to premarket
14 approval by the US Food and Drug Administration,
15 the FDA, as indirect food additives or food
16 contact substances. The original FDA approvals
17 were issued in the 1960s. BPA can leach into food
18 from the protective internal epoxy resin coatings
19 of canned foods and from consumer products. BPA
20 in food and beverages accounts for the majority of
21 daily human exposure. Human exposure to BPA is
22 widespread and BPA has been found in the urine of
23 more than 90% of Americans.

24 The scientific evidence that
25 bisphenol A causes adverse health effects in

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2 humans is not well established. The National
3 Toxicology Program, the NTP, a federal interagency
4 program of the U.S. Department of Health and Human
5 Services, has reviewed the scientific literature
6 on BPA exposure and health effects in laboratory
7 animals. NTP notes that some of the animal
8 studies raise concerns about potential human
9 reproductive and developmental effects in both
10 females and males. Researchers generally agree
11 that more study is needed to understand exactly
12 how these findings relate to human health and
13 development. Investigations to date have not
14 demonstrated specific human health effects or
15 magnitude of such effects.

16 Phthalates are a diverse group of
17 chemicals that impart flexibility and resilience
18 when added to polyvinyl chloride or PVC plastics.
19 Phthalates are also found in a wide variety of
20 consumer products, including personal care
21 products such as soaps, shampoos, and deodorants;
22 vinyl products such as floor tile, shower
23 curtains, upholstery, and waterproof clothing;
24 children's toys and vinyl covered books; care and
25 feeding items; gel caps and codeines on some

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2 pharmaceuticals; and medical equipment such as
3 serum bags IV medical tubing. As a result, human
4 exposure to phthalates is common. Several studies
5 confirm the presence of phthalates or the
6 metabolites in persons of all age groups,
7 including newborns exposed prenatally.

8 People are exposed to phthalates in
9 the food they eat, the air they breathe, and
10 through direct contact with the many products that
11 contain the chemicals. Ingestion by mouthing PVC
12 products is a common means of exposure to
13 phthalates in consumer products. Generally,
14 phthalates are metabolized and excreted quickly
15 and do not accumulate in the body.

16 The six phthalates identified in
17 Intro 175 are present in a wide variety of
18 consumer products and have been subject to at
19 least some scientific investigation. The main
20 health concern posed by phthalate exposure are
21 their potential to interfere with male hormones
22 and male reproductive organ development. There's
23 also a potential that phthalates adversely affect
24 females.

25 The Consumer Product Safety

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2 Improvement Act was passed by Congress in 2008.
3 This law currently limits the amount of the six
4 phthalates in children's toys, care products, and
5 feeding products to less than 0.1% of the total
6 product. The CPSIA has set final limits on three
7 phthalates--DEHP, DBP, and BBP--as more is known
8 about these chemicals. The limits on the other
9 three phthalates--DINP, DIDP, and DNOP--are
10 interim standards. The Consumer Product Safety
11 Commission has convened a Chronic Hazard Advisory
12 Panel on phthalates to further study these
13 chemicals and to issue a report of its findings in
14 2012.

15 The CPSIA does not address BPA in
16 children's products, however, the FDA is currently
17 investigating the need to limit BPA in food
18 containers to reduce human exposure through
19 contact of the BPA surface in containers with food
20 and beverage contents. We are following
21 developments of this FDA initiative. We fully
22 support the federal actions and industry
23 initiatives to reduce human exposures phthalates
24 and BPA in children's products.

25 The efficacy of a ban on such

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2 products is dependent on reliably knowing which
3 products contain the chemicals. Intro 175 covered
4 broad categories of products for which the
5 ingredients are unknown and which are not always
6 labeled. No federal regulations exist requiring
7 disclosure and labeling of ingredients in plastic
8 products, therefore, neither the department, the
9 Department of Consumer Affairs, nor the more than
10 15,000 distributors and retailers in New York City
11 who may sell the targeted products can readily
12 know which product contain BPA or phthalates. In
13 addition, this bill would require enforcement by
14 the Department of Consumer Affairs of an industry
15 where it has no regulatory authority.

16 Federal regulations are the most
17 effective way to limit public exposure and we
18 support a move towards removal of these chemicals
19 from children's products. However, we caution
20 that it is unlikely that any state or local
21 government can effectively remove products
22 containing phthalates and BPA from store shelves.
23 While many localities and states across the
24 country have adopted regulations similar to that
25 which is proposed, without oversight at the

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2 factory level or labeling by the manufacturer,
3 local authorities are limited in their ability to
4 enforce such a ban on products potentially
5 containing BPA or phthalates. While CSPIA allows
6 for the use of labels, the current law does not
7 require them on plastic products.

8 In summary, we support the idea of
9 limiting the use of bisphenol A and phthalates in
10 children's toys and care and feeding products and
11 support further federal action to limit BPA in
12 food and beverage containers. Banning BPA and
13 phthalates from children's products at the point
14 of production would eventually eliminate them from
15 the consumer market. However, without
16 manufacturing and labeling standard efforts to
17 identify and prohibit the sale of children's
18 products that contain these chemicals will likely
19 be ineffective and would not be enforceable on the
20 local level.

21 Thank you for the opportunity to
22 testify and I'm very happy to answer any questions
23 you may have.

24 CHAIRPERSON ARROYO: Thank you,
25 Commissioner. I'd like to acknowledge we've been

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2 joined by Council Member Debbie Rose from Staten
3 Island and Council Member--is that Council Member
4 Al Vann--

5 FEMALE VOICE: Yes.

6 CHAIRPERSON ARROYO: --from
7 Brooklyn. The one and only. I'm going to turn
8 questions over to Council Member Vallone first and
9 then, colleagues, if you have any questions.

10 COUNCIL MEMBER VALLONE: Thank you.
11 I can't say I'm not disappointed with your
12 testimony, it sounds to me like, despite the fact
13 that there are studies showing potential harm,
14 possible harm that many other states have acted,
15 many other municipalities are acted, the
16 Administration thinks we should wait, we should
17 wait for the federal government. We know they
18 didn't think we should wait when it came to trans
19 fats, but for this, they think we should wait, I
20 don't. As we are waiting, our kids are ingesting
21 more and more BPAs and phthalates and I don't want
22 this to be like lead paint, I don't want this to
23 be like asbestos, where we waited too long. We
24 know that there's a potential here and we need to
25 act on a city level to protect our people and our

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children especially before, before it's too late.

Now let me get in some specifics, you say the best way to do this is federal, we understand that, we're all in agreement on that, the best way to do this would be federal, but the federal government has not acted on BPAs, so you seem to say the big problem here is that you can't enforce it because of labeling. In the last sentence, you said was while the CSPIA allows for the use of labels, the current law does not require them on plastic products, which current law?

NANCY CLARK: The Consumer Product Safety Information Act does not require labeling of phthalates or any other materials on--

COUNCIL MEMBER VALLONE:
[Interposing] The federal law.

NANCY CLARK: --children's--the federal law.

COUNCIL MEMBER VALLONE: Oh, even better, so you'd like us to wait for an enforceable law and not do anything now. You said you can't enforce because there's no labels, and you're telling me that the federal law has no

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NANCY CLARK: Well I'm saying that the federal law requires manufacturers to limit the amount of phthalates in the designated products at that level of 0.1%, that right now is a federal law, it's enforceable. On the consumer side of it, there's no way for a consumer or a retailer or a government enforce--a local government enforcer to know if a product has phthalates or not. That's all I'm saying is that the law itself doesn't include a regulation on labeling the contents of phthalates on the product.

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COUNCIL MEMBER VALLONE: So are you aware of how they are enforcing the law in all of the other states and municipalities where they've passed this?

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NANCY CLARK: Well, you know, we also took a hard look at it, at what other states and localities are doing, and frankly, we support the--we see it as a symbolic gesture. We couldn't find any information on the enforcement practices of the states that have passed regulations, that was information we just couldn't find. So we

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couldn't find procedures on how those rules are enforced or what their experience has been, but we suspect that they would have the same difficulty that we would have or the city would have that when they went--at what point of the production retail chain would the enforcement occur and how would the inspector know what product contained phthalates above that level or, in this case, BPA above.

COUNCIL MEMBER VALLONE: Well I'm going to look into that myself--

NANCY CLARK: Yeah.

COUNCIL MEMBER VALLONE: --a little more than I have, but I'm sure there's a way--

CHAIRPERSON ARROYO: [Interposing]
Peter, if you can allow me--

COUNCIL MEMBER VALLONE: Sure.

CHAIRPERSON ARROYO: --what exactly did you ask for and where did you seek that information?

NANCY CLARK: We did a pretty thorough search if we could on the timeframe that we had, we looked at regulations in Washington, Connecticut, Wisconsin, we looked at several of

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the--and I can get back to you all the different--
I can tell you which states that we looked at.
They certainly have bills that very much look like
similar to the proposed bill, but along with the
bill, we did not find what their procedures are
for doing enforcement.

CHAIRPERSON ARROYO: So was this an
Internet search to see if there's a policy or
procedure or regulation posted on a website or did
you dial a number and speak to a human being?

NANCY CLARK: I'll have to get back
to you, I didn't do it ourselves but we--

[Crosstalk]

NANCY CLARK: --from our general
counsel's office.

CHAIRPERSON ARROYO: Yeah, if you
can provide to the committee the extent--

NANCY CLARK: Sure.

CHAIRPERSON ARROYO: --to--

NANCY CLARK: Sure.

CHAIRPERSON ARROYO: --what
research was done to get to a place where you
think it's a symbolic gesture more than anything
else.

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NANCY CLARK: Sure.

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CHAIRPERSON ARROYO: Council Member

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Vallone--

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NANCY CLARK: Absolutely.

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CHAIRPERSON ARROYO: --I'm sorry.

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COUNCIL MEMBER VALLONE: That's a

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great question because they have much a bigger

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staff than my staff of four so I'd love for you to

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get back to me with that information. So what do

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you recommend then that would make this more

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enforceable or something that you would not be as

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opposed to?

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NANCY CLARK: Well I think as we've

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stated, because of the way products are

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manufactured, many of them are manufactured not in

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this country but in other countries, so the

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manufacturing process itself, we need an agency

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that oversees the production practices--what

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materials are used and how those products make it

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into the marketplace. It's only a practical

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measure on our part to understand how a local

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government or state government could enforce such

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a ban without knowing which products contain more

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than the prescribed amount of phthalates or

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2 contain BPA, there's just not a way for people to
3 know readily.

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5 I agree with you that the trans fat
6 ban was certainly a landmark and New York City was
7 really in the forefront, but trans fats are part
8 of the labeling requirements on the food that
9 contain it. Also from the Health Department, we
10 enforce that bill, because we regulate restaurants
11 and that's where our enforcement took place, in an
12 industry that we regulate on a product that has
13 labeling on it so our inspectors could see does
14 the oil contain trans fats or does it not.

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16 COUNCIL MEMBER VALLONE: Right, and
17 yet we could not regulate trans fats that came
18 into New York state from elsewhere, but we could
19 regulate the ones that were here. So at a minimum
20 then, if we pass this law, if any company produced
21 one of these products here in New York City, it
22 would not be able to sell them here in New York
23 City or produce them here in New York City, unless
24 they eliminated phthalates and the BPA, correct?

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26 NANCY CLARK: I'm sorry, say it
27 again from--on this bill, the way this bill--

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29 COUNCIL MEMBER VALLONE: Right.

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NANCY CLARK: --is written, it's written that you also can't manufacture. I don't know, and maybe your staff knows, what the identity of the manufacturers are. The city, as far as I know, and maybe we can find out more, we don't regulate those industries so we don't have that authority to do that. Most industry, as soon as they--and I'm not a lawyer so I probably should stop, but some of this gets into this interstate business, though I'd better--

[Crosstalk]

COUNCIL MEMBER VALLONE:

[Interposing] It's the Commerce clause, right? That's why we were unable to pass a law to ban trans fats from coming into New York City because the Commerce clause says we can't ban interstate--

NANCY CLARK: Exactly.

COUNCIL MEMBER VALLONE: --

commerce, but we were able to make a huge statement and have it make a huge effect by banning trans fats, which I believe we can make with this bill also.

Madam Chair, I'd like to come back maybe later for some questions and turn to some

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other Council Members. Thank you.

CHAIRPERSON ARROYO: Council Member Rivera.

COUNCIL MEMBER RIVERA: Thank you very much, Madam Chair. I just had a couple of follow-up questions myself. In terms of the actual plastics themselves, they do identify which plastic is involved because on the bottom there's a coded numerical coding that signifies which plastic is used in the production of a bottle or something that's being sold to a consumer, so I'm not too familiar with the law that you say that doesn't require it.

NANCY CLARK: I think what you're referring to is the triangle recyclable.

COUNCIL MEMBER RIVERA: Yeah, the triangle, yeah.

NANCY CLARK: That doesn't necessarily include everything, for example, we know that number seven may contain BPA, but we don't know that specifically because that number seven--or you might tell me--number seven is other, it like contains other plastics and BPA is an other.

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COUNCIL MEMBER RIVERA: But isn't it true that federal government sets a baseline of what the law should be and then we can go above and beyond as long as it doesn't supersede whatever pre-existing law exists. So don't we have the authority or the wherewithal to acquire certain amendments to a law to enact a law that'll be more informative to consumers, can't we do that?

NANCY CLARK: That might be a legal question that I probably can't answer or don't know what our jurisdiction is above and beyond what the federals go, I believe that the Consumer Product Information Safety Act does preempt locals from enacting phthalates, but that would I refer back to our general counsel and to the Council's counsel to understand that part. BPA, right now, there is no federal rule other than the FDA rule that's currently standing, which is now under review.

CHAIRPERSON ARROYO: I'm sorry, Council Member Rivera, but, Commissioner, it's difficult for me to accept that you come before the Committee and then say I don't know, I don't

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2 know is not what we're looking for, we're seeking
3 for information that would better inform how this
4 Committee and this legislation can be moved
5 forward. So what is the jurisdiction, you're not
6 an attorney, I appreciate that, but get us back
7 the answer.

8 NANCY CLARK: Sure, we'll do that.

9 CHAIRPERSON ARROYO: And don't make
10 our Committee staff work any harder than they
11 already do. I'd like to acknowledge we've been
12 joined by Council Member Van Bramer, he is here,
13 yeah, thank you for joining us. I'm sorry.

14 COUNCIL MEMBER RIVERA: No, I'm
15 done.

16 CHAIRPERSON ARROYO: You're done--

17 COUNCIL MEMBER RIVERA: Thank you.

18 CHAIRPERSON ARROYO: --okay. So
19 because you're saying labeling presents a major
20 challenge to the enforcement of this legislation,
21 and in absence of understanding what other
22 municipalities or states have done with enacting
23 similar laws and enforcement of similar laws, it
24 puts us at a disadvantage to really have a more
25 in-depth conversation about possible alternatives

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and adjustments to this legislation that I'm sure the sponsor would be very interested in engaging a conversation about. Mr. Vallone, I'm not going to speak for you, but I'm very frustrated to sit here and hear that you don't know what other states or municipalities are doing with regards to enforcement of a law that is very similar to this one. And because we don't have the requirement for labeling to identify the chemicals in the plastics, that it really puts us at a disadvantage for enforcement.

NANCY CLARK: Well I appreciate your frustration and also our own with the time that we had to prepare for this issue we did the best we could and we will follow up to the best that we can to get more information and provide it to the Council.

CHAIRPERSON ARROYO: So it--

NANCY CLARK: [Interposing] But I think labeling is truly a barrier just to understand the breadth of products that were covered here the--

[Crosstalk]

CHAIRPERSON ARROYO: [Interposing]

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2 It sounds to me like you would recommend that
3 labeling be required.

4 NANCY CLARK: Well two things,
5 phthalates, I think the federal government has
6 limited the amount of phthalates to the same level
7 that the City Council proposal does. So that part
8 of the bill, I don't know if it's to the Council's
9 satisfaction, but it appears that those six
10 phthalates are already regulated. The first three
11 which have been studied more have a final
12 standard; the other three, they're enforcing the
13 0.1% limit but they've convened in the meantime a
14 committee of experts to further investigate. So
15 that's an interim standard and they're expecting
16 to issue a report, I believe, in the spring of
17 2012 and I am assuming they're either going to
18 stand by the interim or they're going to change it
19 in some way based on their scientific review.

20 CHAIRPERSON ARROYO: What is the
21 interim standard?

22 NANCY CLARK: So the only--I'm
23 sorry?

24 CHAIRPERSON ARROYO: What's the
25 interim standard because you do indicate in your

1
2 testimony that the law currently limits the amount
3 of six phthalates in children's toys, care
4 products, and feeding products to less than .1%--

5 NANCY CLARK: Correct.

6 CHAIRPERSON ARROYO: --of the total
7 product and that the CPSIA set final limits on
8 three, and as more is known on those, the limit on
9 the other three are interim standards--

10 NANCY CLARK: Right.

11 CHAIRPERSON ARROYO: --what's the
12 interim standard?

13 NANCY CLARK: The same, it's 0.1%,
14 they put the same limit on the other three, they
15 just didn't call it a final standard.

16 CHAIRPERSON ARROYO: I see, okay.

17 NANCY CLARK: As I understand it,
18 the federal government regards that the law as in
19 effect and regards the limits on all six in
20 effect. They've only given themselves two years
21 of additional scientific review for the three
22 other phthalates, which they set interim standards
23 for. So it just means that it's kind of a
24 temporary the way I read it, and that at the end
25 of this panel, on the Chronic Hazards Advisory

1
2 Panel, at the conclusion of their review, the
3 agency will either uphold the current limit of 0.1
4 and change it from interim to final or change it
5 again. But I think that the intent of that
6 legislation was to limit all six, but I believe
7 they didn't feel they had the science behind them
8 on the three.

9 [Crosstalk]

10 CHAIRPERSON ARROYO: And that is on
11 the manufacturing level.

12 NANCY CLARK: Yes.

13 CHAIRPERSON ARROYO: Labeling does
14 not even come into--

15 NANCY CLARK: [Interposing]
16 Labeling does not even come into--the law itself--
17 and it's a very complex law, it also covers lead,
18 content of lead in children's product. And we do
19 commend the federal legislators for enacting that
20 bill, they did it quickly and tried very hard to
21 address important environmental health issues, but
22 there are a lot of complicated technical and
23 scientific issues surrounding that whole
24 legislation. So some of the--so, for example, I
25 believe on phthalates, it's in effect, they expect

1
2 manufacturers to limit the amount; however,
3 they've not yet issued their testing and
4 certification requirements. So in other words,
5 manufacturers may be using different methods on
6 how they test their products because the federal
7 government haven't yet issued what they're
8 expecting the standard to be. And that just
9 speaks to the complexity of some of the technical
10 and scientific issues.

11 CHAIRPERSON ARROYO: What advocacy
12 has the department done at the federal level to
13 deal with the issue of labeling?

14 NANCY CLARK: We currently do not
15 have a--to my knowledge, that we don't have an
16 official position on labeling. We recognize it as
17 a deficiency in this current bill, and I'd have to
18 go back to understand or to review to see if
19 earlier versions of that bill included labelings
20 and it fell out--

21 CHAIRPERSON ARROYO: [Interposing]
22 Well it's a deficiency--

23 NANCY CLARK: --I don't know that.

24 CHAIRPERSON ARROYO: --in the
25 federal law, not this bill.

1
2 NANCY CLARK: Oh, I'm sorry, when I
3 say bill, I'm talking about the federal law, I'm
4 sorry.

5 CHAIRPERSON ARROYO: Oh, okay.

6 NANCY CLARK: I'm not a lawyer.

7 [Crosstalk]

8 [Off mic]

9 NANCY CLARK: Sorry.

10 CHAIRPERSON ARROYO: Well we just
11 want to be--

12 NANCY CLARK: [Interposing] No,
13 it's complicated--

14 CHAIRPERSON ARROYO: --clear--

15 [Crosstalk]

16 NANCY CLARK: --so I don't want to
17 make things more so...

18 CHAIRPERSON ARROYO: So in order
19 for us to work and use our energies in a direction
20 that's going to get us closer to where we hope
21 this bill would get us, what advocacy what would
22 the department engage in to address the deficiency
23 in the federal law that doesn't give us, I guess,
24 the power or the ability to be able to say, you
25 can not put anything on your shelves that contains

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these things in excess of whatever that is.

NANCY CLARK: I can't speak--

CHAIRPERSON ARROYO: [Interposing]

Did everyone understand that question 'cause I think I--

NANCY CLARK: I do.

CHAIRPERSON ARROYO: --confused myself.

NANCY CLARK: I think you're asking, what are we doing to make it--

CHAIRPERSON ARROYO: Yes.

NANCY CLARK: --better at the federal level, and I appreciate that. We have a lot of challenges working with federal rules and standards on a lot of things and a lot of actions that we take at the Health Department, especially a lot of areas under the purview of both the Consumer Product Safety Commission, as well as the Food and Drug Administration. I can tell you that we follow them very carefully, our legislative affairs group monitors and when we have opportunities, we do weigh in. But it's certainly an area that we follow very closely and care a lot about.

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2 CHAIRPERSON ARROYO: Now this law
3 only addresses phthalates, not BPA, so--

4 NANCY CLARK: Not BPA.

5 CHAIRPERSON ARROYO: --I don't want
6 to lose that part of the--

7 NANCY CLARK: Exactly.

8 CHAIRPERSON ARROYO: --
9 conversation, I know Council Member Vallone has
10 other questions, but the BPA discussion--

11 NANCY CLARK: Exactly.

12 CHAIRPERSON ARROYO: --it has to be
13 part of that advocacy that we need to do. If the
14 department feel so strongly that we should have
15 federal action in order for the department or the
16 city to be in a better position to do the
17 enforcement necessary, we cannot forget that there
18 is this other animal out there called BPA that has
19 to be part of that conversation.

20 NANCY CLARK: Right.

21 CHAIRPERSON ARROYO: Council Member
22 Vallone?

23 COUNCIL MEMBER VALLONE: [Off mic].
24 Okay, thank you. Some follow up questions. I
25 agree with Chair completely, I think this labeling

1
2 thing is an interesting technicality that we can
3 easily get around either by lobbying the federal
4 government or doing it on our own here in New York
5 City. But I do think it's not consistent of you
6 to act on trans fats and be a worldwide leader
7 when it comes to trans fats, but say that when it
8 comes to this equally important issue that you're
9 going to sit back and monitor and basically take
10 no action, because you didn't describe any action
11 that you would take. So I want to give you a
12 chance to explain yourself again, you said
13 something about not having the authority to
14 regulate manufacturing, but let you had the
15 authority to regulate food, where is that coming
16 from?

17 NANCY CLARK: In the New York City
18 Health Code, we regulate restaurants for food
19 safety because we want to ensure that the food
20 that people eat doesn't make them sick and we have
21 historic authority to do that. Also through the
22 Food and Drug Administration on the federal level
23 gives locals and states the authority to regulate
24 food service establishments.

25 COUNCIL MEMBER VALLONE: I'm well

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aware of that.

NANCY CLARK: Right, but you--

COUNCIL MEMBER VALLONE: Of the
food part--

NANCY CLARK: Yeah.

COUNCIL MEMBER VALLONE: --but
under what authority have we acted as a City
Council together with the Mayor to regulate the
toxins in our air? We have passed many, many laws
when it comes to regulating the amount of toxins
in our air and you have been very supportive of
that, under what authority?

NANCY CLARK: So you're going to
have to be more specific 'cause it may not be in
my part of the Health Department, but I'll give it
a shot.

COUNCIL MEMBER VALLONE: Limits to
the amount of carbon dioxide in our air, limits to
the amount of pollutants in oil, the different
types of oil we can use, things like that, which
all reduce the amount of toxins in our air, that's
the basis for what we're doing. I would assume
that's because you're the Department of Health and
your job is to protect the health of New Yorkers,

1
2 not just regulate the food. But if we were able
3 to pass laws which regulate the toxins in the air,
4 why can't we pass laws and enforce laws that
5 regulate the toxins in our food? Or in our
6 plastics, I'm sorry, not the food.

7 NANCY CLARK: I may have to beg off
8 and talk more generally to our legal people on
9 those different authorities. Some of those rules
10 that you're talking about limiting the types of
11 fuel oil that are burned in the city, we're also,
12 remember, working under federal Clean Air Act
13 provisions and so there's already an umbrella of
14 federal regulation there, and through our local
15 authority, through building codes and also the
16 environmental protection part of the city rules
17 that have purview over that. So that's not
18 something that the Health Department specifically
19 regulates, although we do, and as we generally do,
20 support actions that limit known health hazards.

21 COUNCIL MEMBER VALLONE: Like this
22 one. But you mention that you haven't taken an
23 official position, I assume you're familiar with
24 the many studies that show a correlation between
25 BPH levels and phthalate levels and serious

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problems in animals, and I assume you're also aware that in 2007 a panel of 38 experts released a consensus statement that addressed the potential impact of BPA on human health. The statement asserted that the health effects present in animals that were exposed to low doses is cause for concerns to humans because of the potential risk for similar adverse effects. The authors correlated recent increases in human diseases, such as prostate and breast cancers, reproductive disruptions, diabetes, obesity, and other problems and adverse effects observed in lab animals exposed to low levels of BPA. I'm aware there are studies that show otherwise, but you're aware of all the studies that show the potential problems with BPA and phthalates.

NANCY CLARK: Correct. Well as much as we can be, yeah. But we do follow it and we've looked at both and we also understand that with many scientific areas, especially when we talk about low dose exposures and we look at studies, and always the strongest evidence for the scientific community is when your studies are replicable--when they're repeated and show the

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2 same effects and that's the strongest type of
3 evidence for us and when you get--

4 COUNCIL MEMBER VALLONE: I'd love
5 to--

6 [Crosstalk]

7 NANCY CLARK: --when you get those
8 differences, I think that the scientific
9 community, you will find some that say absolutely,
10 these are very serious endocrine disruptors and
11 should be closely regulated and then you'll also
12 find scientists who says that these aren't
13 effects, that the studies don't show that, and I
14 think that's the frustration of the scientific and
15 environmental health community right now. And
16 it's important that the FDA is taking another hard
17 look because the limiting of BPA on food and
18 beverage contact surfaces is an important--could
19 be an important transfer of exposure so--

20 COUNCIL MEMBER VALLONE: Yes.

21 NANCY CLARK: --we are again
22 applaud them for taking those--

23 COUNCIL MEMBER VALLONE: It very
24 well could be--

25 NANCY CLARK: -that further study.

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2 COUNCIL MEMBER VALLONE: --and let
3 me say with the amount of science out there that
4 raises the alarm level and with the amount of
5 states and municipalities that are taking action
6 to protect our citizens, I think your department
7 with its vast resources should be doing a lot more
8 than just monitoring what's happening at the
9 federal level. If you think there's something we
10 need to do at the federal level, then I will help
11 you do it; if you think there's some way I need to
12 change this law around to make it more
13 enforceable, more palatable to you, then I will do
14 it, but I will not sit here, I will not sit here
15 and wait until the federal government acts, before
16 I act with the help of this Committee and the
17 leadership of Carmen Arroyo and the rest of the
18 members of this Committee to protect our city and
19 our kids.

20 [Applause]

21 COUNCIL MEMBER VALLONE: Thank you,
22 thank you.

23 CHAIRPERSON ARROYO: Thank you,
24 Council Member, and I just want to piggyback on
25 that. Knowing how strongly the city has played a

1
2 role on so many important issues that then come
3 out as a model for the nation and the world, I
4 cannot accept that this issue cannot be one of
5 them, in particular, since we need to rely, to a
6 certain extent, on the federal level to act in
7 particular on this labeling issue. So you're
8 hearing from this Committee and the sponsor of
9 this legislation that we need to work a little bit
10 more proactively on parallel tracks to try to get
11 this ban and/or restriction enacted. I'd hate to
12 wait 30 years to find out that on this legislation
13 we probably could have prevented effects on the
14 health of people in our city and we did not do the
15 right thing. So we will circle back and what I'd
16 like to offer is to see if we can meet with the
17 sponsor and have a conversation about what other
18 actions we ought to be taking to help the
19 Administration and the department send a very
20 strong message to the federal government that this
21 is important and that they need to act.

22 NANCY CLARK: Right, yeah, we'd
23 like to do that too, thank you.

24 CHAIRPERSON ARROYO: Thank you for
25 your testimony and we will see each other

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hopefully in the very near future to have those conversations.

We've been joined by Council Member Rosie Mendez from Manhattan. And now that--

NANCY CLARK: Thank you.

CHAIRPERSON ARROYO: Thank you. We are going to move to probably the most important panel that we're going to hear from this afternoon, Georgina Vlasipoulos, Vlasipoulos, did I say that right?

[Off mic]

CHAIRPERSON ARROYO: Correct me.

[Off mic]

CHAIRPERSON ARROYO: Georgia Vasilopoulos [phonetic].

[Off mic]

CHAIRPERSON ARROYO: Vasilopos.

[Off mic]

CHAIRPERSON ARROYO: Robin Mann [phonetic]--

[Off mic]

COUNCIL MEMBER VALLONE: More time in Astoria.

[Off mic]

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2 CHAIRPERSON ARROYO: --and these
3 young folks are here from Woodside.

4 [Off mic]

5 COUNCIL MEMBER VALLONE: P.S. 122
6 in [off mic].

7 CHAIRPERSON ARROYO: P.S. 122 in
8 Queens.

9 [Off mic]

10 CHAIRPERSON ARROYO: Is this your
11 first time here?

12 GEORGIA VASILOPOULOS: Yeah.

13 MALE VOICE: Say yes.

14 CHAIRPERSON ARROYO: Okay. So
15 you're going to identify yourself, give your name
16 and begin your testimony and make sure that you
17 speak into the microphone so that the sergeant can
18 record us.

19 [Off mic]

20 CHAIRPERSON ARROYO: You may begin.

21 [Off mic]

22 GEORGIA VASILOPOULOS: My name is
23 Georgia Vasilopoulos [phonetic] and I am a fifth-
24 grade student from P.S. 122 and I will begin with
25 a few questions. Do you have or know any

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2 children? When they were infants, did you give
3 them milk from a baby bottle? Did you put a
4 pacifier in their mouth to soothe their cries?
5 Did you ever think that you might have harmed the
6 child by giving them these things? It turns out
7 that many products such as baby bottles,
8 pacifiers, rubber ducks, sports equipment,
9 cleaning products, and many toys contain bisphenol
10 A and phthalates. These chemicals can cause
11 reduced testosterone levels, lowered sperm counts,
12 genital effects in baby boys, obesity, cancer, and
13 other dangerous diseases. I have a little brother
14 and I'm worried about his future in a world filled
15 with toxins.

16 Studies have shown that phthalates
17 and BPA are not only harmful when swallowed, they
18 can actually go through the skin and cause harm to
19 the innocent child that is holding one of his or
20 her toys. Who would've thought that something
21 that is not meant to be swallowed can still cause
22 harm to whoever comes in contact with it?

23 BPA and phthalates don't only harm
24 children, they also harm the environment--our
25 world. Since phthalates break down quickly in the

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2 air, soil and water contamination must be
3 prevented. Once they enter water, they begin to
4 accumulate in fish and shellfish, causing
5 deformities, deaths, and fertility reduction. The
6 public should be made aware of the dangers.

7 We believe in educating the
8 citizens in order to assist them in making the
9 right purchase decisions. Some manufacturers are
10 limiting or eliminating their use of phthalates,
11 but others insist there's no hard proof that
12 phthalates are causing any sort of problems. They
13 should look at the medical research.

14 Would you want your child getting
15 sick just because they played with a toy or drank
16 a cup of milk? Children are our future, would you
17 want the future to be filled with people that have
18 diseases? The world and our health always go
19 before everything else. Let us provide the next
20 generations to come with a world that is toxic
21 free.

22 ROBIN MANN: Hello, my name is
23 Robin Mann and I am a fifth-grade student that
24 goes to the school P.S. 122.

25 The problem of bisphenol A and

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phthalate contamination and child care products is a very serious and widespread problem. For example, many nations including Mexico and countries in Europe passed similar bans on plastic chemicals in general. Furthermore, according to sixwise.com and bisphenolA.org, 2.8 billion tons of BPA are produced globally each year. DEHP phthalates also slow down middle brain growth and may be the cause of the increased rate of allergic reactions that are occurring.

Subsequently, BPA is continuing to grow as a problem. About 93% of citizens in the U.S., children included, excrete it in their urine. When BPA was tested on rats, they suffered increased fat formation, human diabetic symptoms, and neurotoxic damage. This most certainly affect humans, but to varying degrees. The harm it can do to juveniles daily, however, is much greater than anyone older. It's obvious that the excessive use of bisphenol A and phthalates in young care products is a very hazardous and large-scale dilemma.

In conclusion, I was very fortunate that today we were able to testify as two of the

1
2 95% of Americans that are being victimized by BPA
3 and, moreover, phthalates. We must create
4 policies that can save lives, reduce health
5 problems, and make safe products for raising
6 children with. What is more important, another
7 person's money or the health of the next
8 generation in our world?

9 CHAIRPERSON ARROYO: I had to find
10 out, they're 11 years old, they sound like they're
11 90. Thank you both very much for your testimony.
12 Any of my colleagues have any questions for our
13 panelists? Council Member?

14 [Off mic]

15 CHAIRPERSON ARROYO: Rosie?

16 FEMALE VOICE: Rosie first.

17 COUNCIL MEMBER VALLONE: Rosie
18 first.

19 CHAIRPERSON ARROYO: Okay.

20 COUNCIL MEMBER MENDEZ: I was just
21 wondering for either one of you, how did you learn
22 so much about this topic? 'Cause I just learned
23 all this stuff here sitting in this hearing so....

24 ROBIN MANN: Well one way we learn
25 that was recently we did a Project Citizen about

1
2 environmental effects and health effects that
3 cleaning products and chemicals in them do, and so
4 we were also able to learn about these chemicals
5 as well and child care products.

6 COUNCIL MEMBER MENDEZ: I want to
7 thank you for your testimony today.

8 COUNCIL MEMBER VAN BRAMER: I just
9 wanted to thank you for coming here today and I
10 know that Council Member Vallone is not surprised
11 that such brilliant young minds come from
12 northwest Queens, and as a kid who grew up in
13 Astoria, neither am I. Both of you were
14 tremendous, you're so poised, and particularly for
15 you, young man, for your last sentence, you looked
16 up at each of us for effect, it was brilliantly
17 done, so I just wanted to thank you both for
18 coming and representing Queens so well.

19 COUNCIL MEMBER VALLONE: Can I ask
20 one thing?

21 CHAIRPERSON ARROYO: I want to
22 acknowledge that Council Member Mathieu has joined
23 us, he also has a question, but go ahead--

24 [Off mic]

25 CHAIRPERSON ARROYO: Council Member

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2 Mathieu?

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[Off mic]

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CHAIRPERSON ARROYO: Eugene, I'm

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sorry.

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COUNCIL MEMBER EUGENE: Thank you

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very much. I'm not surprised, but I'm impressed

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and all of us were impressed and you know what,

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you know so much about this topic, I think this is

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a motivation for all of us adults to do research

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[off mic] and to be concerned about everything

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that you say. I commend you and I congratulate

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you. Good job, job well done.

14

CHAIRPERSON ARROYO: Council Member

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Vallone?

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COUNCIL MEMBER VALLONE: If you

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think these two are impressive, you should've seen

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the whole class make a presentation to me

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completely memorized about two weeks ago, and not

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just on this topic on which I was educated well

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beyond what I knew, but on so many other

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environmental topics. And I think it was this

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young man in the front row here who took it upon

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himself to e-mail me, found my e-mail, e-mailed

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me, told me what they were doing, and that's where

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2 I went to the class and heard so much more. If
3 you guys each had one more bill, very quickly,
4 that we could, as a Health Committee, work on,
5 what would you recommend?

6 UNKNOWN VOICE 1: Tough question.

7 UNKNOWN VOICE 2: Well...

8 CHAIRPERSON ARROYO: Don't be shy.

9 COUNCIL MEMBER VALLONE: Think back
10 on your presentation, other things you discussed.

11 [Off mic]

12 COUNCIL MEMBER VALLONE: Perhaps
13 cleaning products in schools?

14 ROBIN MANN: Yeah.

15 GEORGIA VASILOPOULOS: Yeah.

16 ROBIN MANN: Yeah, I think it would
17 be to enforce the law that we should have
18 environmentally sensitive cleaning products used
19 in school.

20 COUNCIL MEMBER VALLONE: Very good,
21 and I've actually, to inform you, we wrote a
22 letter to Joe Klein two days ago asking him what
23 he's doing to enforce that law because you guys
24 told me to. So keep up the great work, we're all
25 so impressed.

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[Off mic]

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CHAIRPERSON ARROYO: Thank you,

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Council Member Vallone, for sharing this treasure

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with us. Thank you both for coming to the

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Committee and helping us understand this issue a

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little better, and congratulations to you and

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obviously to your teachers and those that are

9

leading you through this process.

10

Congratulations, job well done.

11

Now we will call our next panel, we

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have two Stevens and a Joan. We have Steven

13

Risotto, ACC Phthalates Ester panel, Steven--oh,

14

you got me, what does that say? Hen?

15

[Off mic]

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MALE VOICE: It's handed over

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already.

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[Off mic]

19

CHAIRPERSON ARROYO: Hentges, Jess

20

or R.

21

MALE VOICE: Hentges.

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FEMALE VOICE: Hentges.

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CHAIRPERSON ARROYO: From the

24

American Chemistry Council, and we have Joan

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Lawrence from Toy Industry Association.

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MALE VOICE: Do you want to start
it?

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CHAIRPERSON ARROYO: Come up, you
can flip a coin, whoever would like to go first,
if you're in favor, hopefully you all are, and if
you're on both sides of the issue, be nice to each
other.

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STEVEN ROSARIO: Madam Chair, I'm
actually not Steve Risotto, I am Steve Rosario, my
colleague, Mr. Risotto is stuck on a train, he's
trying to--

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[Off mic]

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STEVEN ROSARIO: No, no, no, no,
no, he's trying to make it up from Washington, DC,
he really is our expert on the phthalates so I can
really only go over some of his testimony. If he
does get here, I'd appreciate it if the panel
would let him speak because I know you had a
couple of questions on phthalates. I will just go
over very quickly, that the federal government has
pretty much--

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CHAIRPERSON ARROYO: [Interposing]
I want to interject something--

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STEVEN ROSARIO: Sure.

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2 CHAIRPERSON ARROYO: --to the
3 panelists. All of us who are sitting on the
4 Committee today have a competing briefing over in
5 the members' lounge on the budget. I am going to
6 ask that you please summarize your testimony,
7 you've given us a copy for the record, that will
8 be entered, but in the interest of time and
9 allowing us as much opportunity to get in as much
10 of that briefing as possible, I would appreciate
11 it.

12 STEVEN ROSARIO: Absolutely, and I
13 hate reading testimony so I am going to summarize.

14 [Off mic]

15 STEVEN ROSARIO: [Coughs] Excuse
16 me. The federal government in terms of phthalates
17 has pretty much occupied the field. As the
18 Assistant Commissioner said, there are three
19 phthalates that have already been banned, three
20 that are under a temporary restraint where the
21 Consumer Product Safety Commission is currently
22 researching these. The CPSC has issued actual
23 test methods, protocols, which is very important
24 in our field, and Dr. Steve Hentges will really be
25 able to address some of those issues because what

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happens in phthalates and what happens with BPA are very similar in the sense of testing and what not.

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The issue with phthalates is that-- and it's very easy to save phthalates, but phthalates really is a family of 13 different chemical compounds, and I think that's what makes it a little different than trans fats because you can say phthalates but once you say phthalates, you really then have to talk about the difference between the 13 because they're all used for different applications.

I think you did hear that DEHP, DBP, and BBP are the three that are banned by the federal government, DIMP, DIDP, and DNOP are the two that are under restriction and currently going further evaluation by the Chronic Hazard Advisory Panel. And this panel is doing a comprehensive review of all exposures, not just children's toys, but other products and also alternatives. You oftentimes will hear when someone will say, well there is a safer alternative. And again, I think that something that is a little tricky because no one really defines what a safer alternative is,

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but at least the CHAP panel is looking at those.

In many ways, Intro 175 duplicates what the feds are already doing both in terms of protections for children, and obviously the city, as the Assistant Commissioner said, does not really have the kind of resources to enforce locally. One of the issues that had been raised is well, what are other states doing and not so much on phthalates because many states have already ceded that to the federal government, because we think they're doing a very good job so far. I believe the panel has already started its meetings, so they're not sitting back, we're dealing with a Consumer Product Safety Commission that is very active. At this point, what I'll do is I'll turn it over to Dr. Hentges on BPA.

DR. STEVEN HENTGES: Madam Chair, Members of the Committee, I am Dr. Steve Hentges, and thank you for the opportunity today to speak to you about BPA. So I'm at the American Chemistry Council, and what I do there is I manage a group of the global manufacturers of BPA and polycarbonate plastic and in that role I've been deeply involved in the science on BPA for--

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SERGEANT-AT-ARMS: [Interposing]

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Speak into the microphone, please.

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DR. STEVEN HENTGES: Sorry, keep

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turning my head. Been deeply involved in the

6

science on BPA for more than 10 years now.

7

So I think you know what BPA is,

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it's used primarily to make two things--

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polycarbonate plastic and epoxy resins, these are

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not new materials, they've been safely used for

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more than 50 years now and they're used today in a

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very wide array of common consumer products. I

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think it's important to keep in mind that you hear

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so much about BPA you may think that you are being

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exposed to a lot of BPA by use of consumer

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products, you're not, these products--

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polycarbonate and epoxy--contain only trace levels

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of residual BPA, typically part per million

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levels--very, very low levels. So it really isn't

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possible as a consumer to be exposed to any

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significant level of BPA.

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In your excellent introduction, I

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think you also pointed out that there are many

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studies on BPA and, in fact, BPA is one of the

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best tested of all substances in commerce, you'll

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2 find very few substances that have more test data,
3 more scientific data than BPA. And what that
4 means is that we have a very rich scientific
5 database on which to assess the safety of BPA.

6 In the interest of time, if nothing
7 else, I'm not going to be going through all of
8 those hundreds and thousands of studies on BPA,
9 I'd be happy to follow up with you if you'd like
10 to do that, but today, I think just get to the
11 bottom line. What I think is most important for
12 you to know is that those studies have been
13 reviewed by many government agencies around the
14 world, in particular in the last couple of years.
15 And based on the weight of that scientific
16 evidence there is a consensus among regulatory
17 bodies around the world that--and this is from
18 U.S. to Canada to Europe to Japan to Australia and
19 New Zealand--a consensus that BPA is not a risk to
20 human health, in particular at these very low,
21 very trace levels that people could be exposed to
22 from use of consumer products.

23 Just within the last year, really
24 the last couple of years, we've seen updated
25 assessments from the European Food Safety

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2 Authority, the European Union, supporting
3 statements from the French Food Safety Authority,
4 the Danish Environmental Protection Agency, the
5 Swiss Health authorities. Just in January of this
6 year we saw an updated statement from the German
7 Federal Institute for Risk Assessment and also one
8 from the Australian and New Zealand Food Safety
9 authorities. All of them agree that BPA, at these
10 trace levels that we are exposed to, is not a risk
11 to human health.

12 In the U.S., the relevant agency,
13 for BPA anyway, is FDA and, as I think you know,
14 FDA has an assessment that's underway right now.
15 FDA has been monitoring the science on BPA for
16 more than 10 years now and they've been consistent
17 in their views on the safety of BPA. But they do
18 have an assessment that's underway now, I don't
19 know when they will next have something to say
20 about it, but they have been consistently
21 affirming their view on the safety of BPA. In
22 January, for example, FDA provided an update on
23 their views and I'll give you just a couple of
24 quotes that I think succinctly summarize where
25 they're at, the one that is probably the most

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2 concise is from Dr. Joshua Sharfstein, who is
3 basically second in command at FDA, he said, if we
4 thought it was unsafe we would be taking strong
5 regulatory action, but in fact, FDA is not taking
6 or even proposing any regulatory action at this
7 time. What they are doing is they're doing some
8 research of their own, they recognize, as we do,
9 that there are scientific questions that can and
10 should be answered and so they are conducting
11 research in their labs down in Arkansas, the
12 National Center for Toxicological Research. That
13 research will play out over the next one or two
14 years, something like that. We've already heard
15 some of the preliminary results from them at a
16 scientific conference back in December, we expect
17 to see published in the peer-reviewed scientific
18 literature, a couple of papers in the next one or
19 two or three months. So FDA is very actively
20 involved in BPA. And so far their views on it
21 have been very consistent about the safety of BPA.

22 Although many government agencies
23 have already reviewed BPA, they do remain vigilant
24 and continue to monitor BPA. There is new science
25 that continues to come out, government agencies

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2 are staying engaged, staying involved, they're
3 monitoring, they're reviewing, and that's what we
4 expect them to do. For example, coming up, we
5 expect an update in July, it looks like the date
6 from the European Food Safety Authority, which is
7 kind of like FDA in Europe; we also expect an
8 update from the Japanese government, the Ministry
9 of Health, Labor, and Welfare, which, again, is
10 kind of like the FDA in Japan. At the
11 international level, the World Health Organization
12 and the Food and Agricultural Organization of the
13 UN are planning a review of BPA that'll take place
14 in November of this year.

15 And the reason I bring this all up
16 is that, in light of this very intense scrutiny
17 from government agencies around the world, it's
18 not clear to me at least that legislative action
19 on BPA is really necessary or appropriate at this
20 time, and so I would encourage you to consider the
21 views of the many governments around the world
22 that have looked at BPA, looked at the science in
23 great detail, and drawn their conclusions so far.

24 Want to finish off, I know you have
25 other things you want to do, so I want to be

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respectful of your time, but I want to finish off just with one last thing. When you think about the rich scientific database on BPA, again, there's really nothing that has that kind of data available, you won't find any alternatives that have been tested even remotely as well. So although you hear about safer alternatives, that is really not something you can say based on scientific fact, the facts really aren't there.

So I think just in closing, again, I don't take up any more of your time, you may have questions, but in closing, I want to encourage you to consider these consensus views of the governments around the world that have reviewed the safety of BPA, we support FDA and their review, and we would encourage you to also work with them. Thank you.

JOAN LAWRENCE: Good afternoon, Chairwoman and Members of the Committee, my name is Joan Lawrence, I'm Vice President of Safety Standards and Government Affairs for the Toy Industry Association, and the Toy industry Association is a not-for-profit trade group based here in New York City and we represent over 500

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toy companies and distributors throughout the U.S.

I want to talk about Intro number 175. First I'm going to talk about the phthalates provisions in it and, as you have heard already today, these are provisions that are already federal law for toys sold anywhere in the U.S., including in New York City. They are identical to the federal requirements and these are already enforced at the federal level and toy companies selling in the U.S. must test their products to those federal requirements and produce a certificate of compliance to sell to a retailer here in this country. So that is an existing requirement and I would suggest that it's not necessary for New York City to do the same thing, it would be redundant, and could impose additional redundant testing requirements on the companies producing those toys. In other words, if you want to sell to a retailer who has stores in New York City, the retailer would then want the assurance of knowing you tested specifically for New York City even if you had already tested for the federal requirement. So it imposes additional testing requirements, which is delays and money

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and costs of the product.

So then if we talk about the BPA provisions in the bill --

COUNCIL MEMBER VALLONE:

[Interposing] Just to clarify, that's only regarding three of the phthalates that the rules have been set for.

JOAN LAWRENCE: No, it's all six phthalates named in this bill. All six are regulated at the federal level.

COUNCIL MEMBER VALLONE: Well three have set regulations through the rules, the rest have not yet been set.

JOAN LAWRENCE: [Interposing] Three have permanent requirements under the Consumer Product Safety Improvement Act and three have interim requirements that are in full effect unless CPSC rescinds them or changes them in any way, which they have not yet, they are studying them. So all six are in full effect at this time.

And then regarding BPA, there is no jurisdiction in the U.S. or internationally that has restricted BPA use in toys. As you've heard, it's used specifically for the safety it brings to

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2 a product, and when it comes to toys that is
3 shatter resistance. We are trying to avoid more
4 acute hazardss--sharp edges that would result in
5 breakage or small parts which, of course, are
6 choking hazards. So it's really chosen for
7 specific uses in specific types and parts of toys,
8 where you do not want breakage and so that's why
9 it's chosen. It's also, you've heard, well
10 demonstrated for its safety. Numerous times FDA
11 and other scientific bodies have looked at this
12 and found no reason to restrict it in children's
13 toys. And there is no other jurisdiction that has
14 done this. A couple of states have looked at
15 restricting it in toys and upon further study
16 found that there is no reason to do it based on
17 the way toys are used, the reason it is used in
18 toys, and the safety that it brings to those toys.

19 So that, in short, is a summary of
20 my testimony which you have in full, including a
21 little bit of background on safety standards here
22 in the U.S. We have comprehensive safety
23 standards, and I actually chair a group under ASTM
24 International, which is a safety standards
25 development organization. We have consumers,

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medical experts, pediatricians, government, and industry that together write our U.S. standards and they were recognized by Congress in 2008 as exemplary and adopted as mandatory federal rule. So this is an effort that is actually my full-time job is developing standards and ensuring that we have tough standards here in the U.S. for any product sold here and that we educate the industry on what they are so that they can comply.

CHAIRPERSON ARROYO: Some manufacturers have already stopped making products with the chemicals that we're discussing here. So have they found a substitute that does not give us the same level of concern that these chemicals that we're discussing today do?

JOAN LAWRENCE: Well for phthalates they have to--

CHAIRPERSON ARROYO: [Interposing]
And how are they--

[Crosstalk]

JOAN LAWRENCE: --stop using them.
And, yes--

CHAIRPERSON ARROYO: So there is a substitute.

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2 JOAN LAWRENCE: For phthalates.

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CHAIRPERSON ARROYO: Yes. That
4 we're not going to in three, five years discover,
5 oh my goodness, we have a problem with these too?

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JOAN LAWRENCE: Do you want to talk
7 about alternative plastics?

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STEVEN ROSARIO: Well actually,
9 Madam Chair, with your permission, may I really
10 relinquish my seat here for my colleague, the
11 expert who just came in, Mr. Steve Risotto?

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CHAIRPERSON ARROYO: It's actually
13 quite simple, is there an--obviously, there's an
14 alternative and what about for BPAs? 'Cause I
15 keep hearing about phthalates and the legislation
16 also addresses BPA, so we're not having a very
17 substantive conversation around BPA. Council
18 Member--

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STEVEN ROSARIO: Well, Steve, why
20 don't you answer the question about BPA
21 alternatives.

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CHAIRPERSON ARROYO: Substitute, is
23 there a substitute?

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DR. STEVE HENTGES: Yeah, well
25 first for BPA you wouldn't have polycarbonate

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2 plastic without BPA, so that's polycarbonate is
3 what you're looking at, is there a substitute for
4 that, and I think, as probably you said in your
5 introduction, baby bottle manufacturers have
6 already moved to different plastics, not because
7 polycarbonates unsafe, it's because they're not
8 really interested in the public attention to BPA.
9 But to get to your question --

10 CHAIRPERSON ARROYO: [Interposing]

11 I'm sorry, I don't understand what--

12 DR. STEVE HENTGES: [Interposing]

13 There's a lot of controversy and baby bottle
14 manufacturers aren't really in the business of
15 defending the safety of the plastic, they're
16 interested in selling a product, so with all the
17 controversy and public attention, they've moved on
18 to other materials. But to get to your question,
19 are they safer, I don't think we can really answer
20 that, there's no alternative that has anywhere
21 near the same scientific data as BPA. And what
22 you said at the end there is actually almost
23 exactly the same as a quote that I want to give
24 you. This is from a paper written very recently
25 by two authors, one of which is Linda Birnbaum,

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2 who is the head of NIHS, and picking out one
3 sentence here, they were looking at BPA kind of as
4 a case study and they said our literature search
5 on some of the replacement chemicals revealed no
6 exposure information and, very similar to you,
7 they said, years from now will we be seeing
8 exposure studies describing certain BPA
9 alternatives as emerging chemicals of concern.
10 The answer is we don't know, the data is not there
11 to be able to say the alternatives are safer.

12 CHAIRPERSON ARROYO: Council Member
13 Vallone?

14 COUNCIL MEMBER VALLONE: That's no
15 reason not to get rid of something that we know is
16 a problem. Joan, I think it was, you said that
17 the industry is abiding by the elimination of
18 phthalates at the federal level, what have they
19 done to do that?

20 JOAN LAWRENCE: Companies are
21 required to comply with the 0.1% levels that you
22 also have in your New York City proposed law and
23 they must test their products with an independent
24 testing lab to demonstrate compliance with that
25 federal requirement before selling to a retailer.

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2 COUNCIL MEMBER VALLONE: And has
3 this resulted in any problems in your industry?
4 Are toys falling off the shelves in six different
5 pieces? What has the result of the elimination of
6 phthalates been to your industry?

7 JOAN LAWRENCE: Numerous products
8 have had to be destroyed, thrown out, it has
9 created increased testing costs--

10 COUNCIL MEMBER VALLONE:
11 [Interposing] Those were products that were
12 previously produced.

13 JOAN LAWRENCE: Yes, that's right,
14 prior to the--

15 COUNCIL MEMBER VALLONE:
16 [Interposing] Nothing that was built--

17 JOAN LAWRENCE: --effective date--

18 COUNCIL MEMBER VALLONE: --
19 subsequent just disintegrated--

20 JOAN LAWRENCE: --effective date--

21 COUNCIL MEMBER VALLONE: --want to
22 be clear, okay.

23 JOAN LAWRENCE: Some companies have
24 actually as a result of the federal legislation
25 gone out of business because of the unintended

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2 costs that it created in terms of testing and
3 compliance. The way actually the federal
4 legislation is written, it doesn't matter if your
5 product is plastic or not, you still have to test
6 for compliance, and so a wooden toy, for example,
7 would have to be tested to prove that it doesn't
8 have any plastic in it. And that's one example of
9 where it's having some unintended consequences.

10 COUNCIL MEMBER VALLONE: What
11 company has gone out of business as a result of
12 this law?

13 JOAN LAWRENCE: We actually have
14 several members that have dropped their membership
15 and gone out of business because of it, I don't
16 have their names with me, but I would be happy to
17 provide that.

18 COUNCIL MEMBER VALLONE: As a
19 result of the phthalates law, not the economy,
20 it's the phthalate--

21 [Crosstalk]

22 JOAN LAWRENCE: [Interposing] As a
23 result of the Consumer Product Safety Improvement
24 Act which includes the phthalate law and testing
25 to it, yes.

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2 COUNCIL MEMBER VALLONE: Oh, so it
3 could have been other provisions of the Consumer
4 Product Improvement Act.

5 JOAN LAWRENCE: Well yes, because
6 it requires testing to all of its requirements.

7 COUNCIL MEMBER VALLONE: And there
8 are many of your members obviously who are dealing
9 with this ban by just lowering the amount of
10 phthalates in their products.

11 JOAN LAWRENCE: That's right, some
12 have moved away from making any products of that
13 soft, pliable plastic that phthalates brings to a
14 product.

15 COUNCIL MEMBER VALLONE: I haven't
16 seen any shortage of these projects in the
17 supermarkets. [Off mic]. You said you're from a
18 not-for-profit, I just want to make clear that
19 this is not an unbiased not-for-profit, I assume
20 you're funded by the toy industry.

21 JOAN LAWRENCE: We are, our members
22 include the toy companies, we have over 500 member
23 companies located throughout the U.S., and we also
24 own and manage the American International Toy
25 Fair, which is every February here in New York.

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We bring 30,000 companies, retailers, and manufacturers to New York City for the annual show.

COUNCIL MEMBER VALLONE: I'm sure you do a great job, I love toys. Normally, you and I are on the same page when it comes to toys, but the chemical industry--

JOAN LAWRENCE: [Interposing] Then you would love to hear about our foundation, but I won't go into that.

COUNCIL MEMBER VALLONE: Another time. The American Chemistry Council, I assume, that's a group funded by whom?

DR. STEVEN HENTGES: It's manufacturers of chemicals and the ones I work with in particular are the global manufacturers of BPA and polycarbonate plastic.

COUNCIL MEMBER VALLONE: And there's nothing wrong with that, you're entitled to your advocate's position, but I just want to make clear that you're funded by the industries that we are trying to regulate. I don't want to do what the Chair doesn't want you to do and take up time, so we'll discuss this all at a further

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2 date, but thank you for coming down today.

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CHAIRPERSON ARROYO: I just have a real simple question, we had these incredible young people come here to tell us, to raise awareness about this issue, and what do we say to them, are they wrong?

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DR. STEVEN HENTGES: I don't think it's right or wrong, I think we recognize that there are concerns about BPA and for phthalates as well, and so what we do is we work very closely with the government agencies like FDA that regulate these products, we sponsor a lot of research ourselves because we recognize there are scientific questions that need to be answered, so we continue to sponsor research ourselves. So we're very active, I don't think it's fair to say that we would be denying these issues at all, we're very well aware of them, we appreciate hearing about them, and we will continue working on them.

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CHAIRPERSON ARROYO: We have a new member on the panel who jumped off the train I understand a few minutes ago, so we want to give you a couple of minutes to give us some wisdom on

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this issue.

STEVEN RISOTTO: Thank you, it slowed down enough for me to get off without having to hurt myself too badly. I appreciate the opportunity to be here and I apologize for my tardiness.

[Crosstalk]

SERGEANT-AT-ARMS: --your name, sir.

STEVEN RISOTTO: My name is Steve Risotto, not to confuse you with Steve Rosario--

[Crosstalk]

STEVEN RISOTTO: Okay. And I am--

[Crosstalk]

CHAIRPERSON ARROYO: --you missed that part.

STEVEN RISOTTO: Okay. I am a native New Yorker, and I represent the phthalates manufacturers, I am the Senior Director for Phthalate Esters at the American Chemistry Council.

And I think rather than repeat what Joan and Steve have already said, I want to address the one question you raised, Madam Chair,

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2 about the alternatives to phthalates and how well
3 tested they are and whether concerns might occur
4 in subsequent years. And how I respond to that is
5 that Congress, in its wisdom, directed CPSC to
6 appoint an advisory panel, a Chronic Hazard
7 Advisory Panel, to look not only at the interim
8 restrictions on the three phthalates that Joan
9 referenced, the restrictions that are in place
10 until CPSC decides to remove them, but to also
11 look at the alternatives to the phthalates in
12 making flexible plastic and to look at all
13 exposures to both the phthalates and these
14 products, not just exposures from toys. Their
15 report is expected in two years, probably April of
16 2012 or thereabout, and then CPSC will make some
17 recommendation on whether further action is
18 required six months after that. So there is at
19 least an awareness that the replacement of the
20 phthalates with other products needs to be
21 considered, potential health concerns. Not to
22 suggest that there are necessarily, but that is
23 something that Congress has directed CPSC to look
24 at.

25 CHAIRPERSON ARROYO: Thank you.

1

2 Council Member, do you have any further questions?

3 Thank you for your testimony, I certainly

4 encourage you to continue your conversation with

5 the sponsor of this legislation. I think working

6 together, we might be able to get to a place where

7 we feel a much greater level of comfort about what

8 we're trying to accomplish here. More

9 importantly, to respond to the issues that these

10 young people have raised for us. Thank you for

11 your testimony.

12 We're going to call up a panel of

13 four and you're all in favor so we're going to put

14 you all together, and so that way you don't have

15 to be nice to each other. We have Wendy

16 Rubinstein [phonetic] from Mount Sinai Children's

17 Environmental Health Center, are you here?

18 WENDY RUBINSTEIN: Yes.

19 CHAIRPERSON ARROYO: Miranda

20 Massie.

21 MALE VOICE: Right here [off mic]--

22 [Crosstalk]

23 CHAIRPERSON ARROYO: New York

24 Lawyers for the Public Interest?

25 [Off mic]

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FEMALE VOICE: I'm sorry.

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CHAIRPERSON ARROYO: You're Lawyers
for Public Interest, one of my favorite groups.

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Kristina Jung [phonetic], WE ACT, and Michael

6

Schade--

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[Crosstalk]

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CHAIRPERSON ARROYO: --Schade--

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FEMALE VOICE: Yes.

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CHAIRPERSON ARROYO: --Center of

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Health, Environment, and Justice. And you didn't

12

travel very far.

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[Off mic]

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CHAIRPERSON ARROYO: Welcome. Have

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you guys done this before?

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FEMALE VOICE: No.

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CHAIRPERSON ARROYO: Go in whatever

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order you think you feel more comfortable. Speak

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into the mic, otherwise Nick will yell at you, and

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identify yourself before you begin your testimony.

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As in the former panel, please summarize your

22

testimony, if you have a hard copy for the record,

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it will be entered fully into the record. You may

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begin.

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WENDY RUBINSTEIN: Should I go?

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FEMALE VOICE: Sure.

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WENDY RUBINSTEIN: Should I start?

4

Okay. Members of the Health Committee, thank you

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so much this opportunity to testify today on

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amending the Administrative Code of the City of

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New York in relation to the sale of toys and child

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care products that contain bisphenol A and/or

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phthalates. My name is Wendy Rubinstein, I'm the

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mother of a three-year-old and I'm an Executive

11

Board member of Mount Sinai's Children's

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Environmental Health Center. I'm also a lifelong

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New Yorker, as is my husband of 10 years.

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The Children's Environmental Health

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Center at Mount Sinai is among the foremost

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institutions researching the effects of every day

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chemicals on pediatric health and development.

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Our director, Dr. Philip Landrigan, is a world

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leader in the field of public health and

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preventive medicine.

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Dr. Landrigan, Mount Sinai's

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pioneering doctors, and researchers, and my

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colleagues on the Executive Board share grave

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concerns about the relationship between pediatric

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exposures to everyday chemicals such as BPA and

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2 phthalates and childhood and adult disease. We
3 believe there is an urgent need for state and
4 local governments to enact laws such as the one
5 being considered today because the federal
6 chemical regulatory process is broken.

7 More than 80,000 new synthetic
8 chemicals have been developed since World War--
9 sorry, World War II, with fewer than 20% ever
10 having been tested for possible toxicity to
11 infants, children, and pregnant women. Almost
12 3,000 of these chemicals are classified as high
13 production volume, meaning they are produced in
14 excess of one million pounds per year, this
15 includes BPA and phthalates.

16 Coinciding with this chemical
17 revolution is the fact that rates of chronic
18 childhood disease are skyrocketing. Scientific
19 evidence is implicating chemical exposures in
20 early life as the reasons for these increases in
21 childhood disease, as well as an increased risk
22 for disease in adulthood.

23 Studies by the Federal Centers for
24 Disease Control and Prevention have demonstrated
25 that nearly all Americans have measurable

1
2 concentrations of BPA and phthalates in their
3 bodies. The main concern surrounding BPA and
4 phthalate exposure is due to their ability to
5 disrupt the normal functioning of the body's
6 endocrine system. BPA was originally developed by
7 the pharmaceutical industry as a synthetic
8 estrogen, and it was discovered afterwards to have
9 helpful properties in plastics.

10 Infant formula and foods can be
11 contaminated with BPA when it leaches from the
12 chemical linings used to keep cans from rusting.
13 Phthalates are also endocrine disruptors, they
14 alter the normal functioning of the body's
15 hormonal signaling system and disrupt
16 communication between cells and organs in the
17 body. Both BPA and phthalates can leach out of
18 the products to which they are added, causing
19 exposure through ingestion of foods found in
20 plastic packaging or mouthing of products,
21 children are particularly at risk.

22 There is a broad and growing
23 consensus within the scientific community that BPA
24 and phthalates pose significant threats to our
25 children's health and that exposure should be

1
2 avoided. As the evidence against these chemicals
3 mounts, legislation has increasingly been adopted
4 as a precautionary measure to restrict their use
5 both at the state and local levels in the United
6 States and also abroad. In 2005, the EU banned
7 phthalates in all toys and child care products.
8 Last year in Canada, the use of BPA was restricted
9 in bottles, toys, and food packaging for infants
10 and newborns. California has banned some classes
11 of phthalates in toys and child care products,
12 legislation banning BPA in children's products
13 have also been passed in Minnesota and
14 Connecticut. Here in New York state, bans on BPA
15 have been passed, starting with Suffolk County in
16 2009, followed by Schenectady and Albany Counties.
17 I urge the Health Committee to support this Local
18 Law and protect the children of New York City from
19 chemicals strongly suspected of posing serious
20 health risks.

21 When my daughter Ava was born just
22 over three years ago, I could not imagine how
23 difficult it is to be a parent in today's complex
24 world. I am unable to trust the products sold in
25 the market place and spend countless hours

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2 researching their ingredients--if they are even
3 listed on the product at all. Phone calls to
4 manufacturers and storekeepers do not help, as a
5 majority are completely unaware of the chemicals
6 used in the products they sell for use by
7 children. As a parent knowledgeable and concerned
8 about these issues, I can say from the experience
9 that the federal government has allowed a heavy
10 burden to be placed on parents' shoulders. It is
11 impossible to do what is right for your child's
12 health with the current state of chemical
13 regulation in this country. Suspect chemicals
14 such as BPA and phthalates are ubiquitous and even
15 if one is successful in reducing exposures at home
16 to a minimum, there are still daily exposures as
17 soon as your child steps out the front door.

18 This amendment to the
19 Administrative Code is an important sign of
20 progress towards filling the enormous--excuse me,
21 holes in our federal health protection system. It
22 is a common sense, precautionary measure that will
23 reduce the threats to our children's health and
24 should also have the side benefit of improving the
25 well-being and productivity of their worried

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2 parents. Thank you.

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CHAIRPERSON ARROYO: I'm going to try to be real nice about this, so please summarize your testimony. And I'm going to apologize in advance for the rush, but we have competing hearings and briefings going on that are all equally important and I want to give everyone as much opportunity as possible to provide testimony. Thank you.

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MIKE SCHADE: Great, I'll do my best to be brief. So good after, Chairwoman and Members of the Committee, thank you for the opportunity to testify here today. My name is Mike Schade, and I'm with the Center for Health Environment, and Justice, we're a national environmental health organization. I work out of, CHEJ's office here in New York City and have been working professionally on children's environmental health issues here in New York state for the past 10 years.

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I am the co-author of a number of national reports investigating both phthalates, as well as bisphenol A and various consumer products, including those that children come in contact with

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on a regular basis.

So first I'd like to start by saying that we commend and fully support the Council's legislation to ban phthalates and BPA in children's products, and first I'd like to address the issue of phthalates. As some other panelists have mentioned, it appears, while well-intentioned, unfortunately, the proposed legislation on phthalates may unfortunately be preempted by the federal law that Congress enacted.

Given this, we urge the City Council to investigate opportunities for the city to regulate and address phthalates that find their way into other products that children, infants, and women of childbearing age come in contact with on a regular basis which are not currently covered by the federal law--the CPSIA law that was mentioned. We feel that this is critically important as many phthalates have been linked to reproductive health problems in women, including shorter pregnancy duration, premature breast development in girls, sperm damage in men, impaired reproductive development in boys, and

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many other health issues.

Phthalates, pretty much everyone in this room has measurable levels of phthalates in our bodies, phthalates are highest in children ages 6 to 11, like some of the children in this room here today, and phthalates are also highest in women. Now while phthalates have been banned by Congress in children's toys, they are widespread in many other products that children come in contact with on a daily basis in schools, including schools here in New York City. Over 90% of all phthalates are found in PVC plastic, which is the plastic toy that most commonly contains phthalates. Many of these products are found in schools, this includes products like vinyl flooring, backpacks, lunch boxes, and other products that children come in contact with on a daily basis. Unfortunately, right now the federal law does not address these products of concern.

Children and teachers can be exposed to phthalates from these products because the phthalates can evaporate and be released into the air inside schools. These chemicals then cling to the dust and then can be breathed in by

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children, teachers, and other faculty in schools.

There's been a number of independent peer-reviewed scientific studies that have come out in recent years that have found correlations between phthalates off gassing from vinyl flooring and asthma in both children and adults. One new study that just came out this past year actually found a statistically significant correlation between phthalates off gassing and autism in children.

As we know, asthma is a huge issue here in New York City, so we really urge the city to explore other ways that the city could address phthalates in products that are not being covered by the federal law. For example, the city could investigate ways for schools to buy PVC in phthalate-free building products, school and office supplies. The city obviously spends millions and millions of dollars a year through procurement, buildings, renovating buildings, many of these materials contain phthalates and children are being exposed to them on a daily basis and unfortunately, the law as it's currently written, as well as the federal law, does not address these

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critical exposure areas.

Now I'd like to switch some of my testimony to BPA, and I will summarize my testimony here. BPA is a synthetic sex hormone, there's been over 200 independent peer-reviewed scientific studies that have found that BPA can be harmful even at very low levels of exposure, including levels that all of us are being exposed to on a daily basis through the products that we buy through the food that we eat and so on. BPA has been linked to cancer, abnormal behavior, diabetes and heart disease, infertility, developmental problems, reproductive health problems, even obesity, early puberty, which actually is actually a known risk factor for breast cancer.

It's worth noting that most of these studies that have found harm from BPA were done by independent scientists, many of whom are academic institutions that were funded by the government. Now there are studies that are out there that have found that BPA is safe and BPA is not harmful, and it's worth noting that most of those studies that found that BPA is safe are

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2 actually studies that were funded by the chemical
3 or the plastics industry. Those studies
4 consistently found no harm and, just like the
5 tobacco industry argued for decades that smoking
6 is perfectly safe, the BPA and plastics industry
7 continues to argue that BPA is perfectly safe.

8 Now if we look at the statistics,
9 it's clear that every one of us is exposed to BP
10 on a regular basis. Almost every single person in
11 this room here has measurable levels of BPA in our
12 bodies, and this is according to testing done by
13 the federal government, the CDC. Even babies are
14 born pre-polluted with BPA. BPA has been found in
15 the cord blood of newborn infants. BPA is found
16 in many different consumer products from baby
17 bottles to water bottles, food can linings, and so
18 on.

19 Most recently, I co-authored a
20 report, which I have here with me, called New
21 Silver Lining, and in this report what we did is
22 we sent canned food to laboratories to find out
23 whether or not the food that we're eating from
24 cans actually contains BPA, because BPA is
25 commonly used as a lining in the epoxy resins that

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2 we find in canned food. Surprisingly, we found
3 BPA in over 90% of the canned foods that we
4 purchased, this was things like vegetables and
5 green peas and other products, 92% of the cans
6 that we tested had measurable levels of BPA. We
7 tested 50 cans from 19 states across the country,
8 including here in New York state.

9 Given these various health concerns
10 around BPA exposure, given our ubiquitous exposure
11 to it, there's been a major market and policy
12 movement away from BPA. Some of the biggest
13 retailers in the country like Wal-Mart and Target
14 and CVS are going BPA-free, many different
15 companies that make infant formula and baby food
16 packaging are going BPA-free, companies like
17 Nestlé and we're seeing a major market shift away
18 from BPA in canned food. Over 10 years ago, Eden
19 Foods actually went BPA-free in 1999. If a small
20 company like Eden Foods can go BPA-free, why can't
21 some of the bigger food packaging companies here
22 in this country? Water bottle companies such as
23 Nalgene have eliminated BPA, this here water
24 bottle is BPA-free. If you look at most of the
25 sectors where BPA is commonly used in food contact

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2 materials, there are safer and cost-effective
3 alternatives that are out there.

4 On the government policy side, many
5 U.S. cities and counties have also taken steps to
6 regulate BPA. Here in New York state, Suffolk
7 County, Albany County, Rockland County, and
8 Schenectady counties have all taken efforts to
9 restrict or ban BPA, particularly in baby bottles.
10 The city of Chicago has also enacted a restriction
11 on BPA. So clearly the city has authority to
12 address this chemical of concern given the
13 precedent that's been set by others cities as well
14 as counties here in New York and across the
15 country. Legislation to restrict BPA has been
16 introduced in over 20 states across the country,
17 there's been six states that have enacted
18 restrictions on BPA, including Connecticut and
19 Maryland. At the U.S. federal level, federal
20 legislation is now being considered to restrict
21 BPA, Senator Schumer and Representative Weiner
22 have both introduced legislation to ban BPA. And
23 in terms of federal health agencies, both the FDA
24 and the Department of Health and Human Services
25 earlier this year have issued statements

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2 expressing concern about the impact that BPA
3 exposure has on human health, and these statements
4 actually mirrored concerns by the federal and
5 national toxicology program.

6 So it's actually not true that the
7 federal government has given BPA a sign of
8 approval. The NTP has expressed some concern for
9 BPA effects on the brain, behavior, and prostate
10 gland in fetuses, infants, and children at levels
11 that all of us are exposed to on a daily basis,
12 including exposures. The U.S. EPA has declared
13 BPA a chemical of concern and is in the process of
14 developing a chemical action plan, and in Europe
15 and elsewhere around the world, we're beginning to
16 see more and more restrictions on BPA. In fact,
17 just yesterday, the German environmental agency
18 they announced that they're advising
19 manufacturers, importers, and users of BPA to use
20 safer alternatives, in Canada, BPA has been banned
21 in baby bottles. So there is a major market shift
22 away from BPA at every level of the economy where
23 BPA is being used, and at the same time we're
24 seeing major restrictions on BPA in cities,
25 counties, states, at the federal level, and also

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the international level.

So given this, we feel that these similar trends should be reinforced here in New York state, we feel that New Yorkers deserve these same levels of protection and we strongly urge you to support this legislation, and think about ways that it can be brought in to address other areas in which children and consumers are exposed to both phthalates and bisphenol A. Thank you.

CHAIRPERSON ARROYO: [Off mic] Try not to grab it by the base, yeah, pull it by the base.

[Off mic]

MALE VOICE: The base.

FEMALE VOICE 1: You should pull it by the base.

KRISTINA JUNG: Yeah.

[Off mic]

KRISTINA JUNG: The other base.

CHAIRPERSON ARROYO: Yeah.

KRISTINA JUNG: Okay. Madam Chairwoman and Members of the Council, my name is Kristina Jung and I will be delivering testimony on behalf of WE ACT.

1
2 WE ACT is a northern Manhattan-
3 based organization which builds healthy
4 communities by ensuring the meaningful
5 participation of people of color and low income in
6 the--sorry, the development of environmental
7 health and protection policy and practice. We
8 thank the Committee and the Council for taking
9 leadership on this very important action to
10 protect the health and development of our
11 children, particularly the infants and toddlers
12 who will be most benefited by the proposed
13 legislation.

14 And there has been a lot of
15 testimony regarding the hazards of BPA and
16 phthalates and their widespread use, so I will
17 simply address this legislation from an
18 environmental justice perspective. So within the
19 environmental justice context phthalate and BPA
20 containing PVC products are most pervasively used
21 in communities of color and low income. In
22 northern Manhattan, our neighborhoods abound with
23 discount and \$.99 store offering the cheapest,
24 most poorly manufactured PVC products most likely
25 to contain the worst forms of phthalate, so

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2 there's a very disproportionate impact on these
3 communities here. Low income families use
4 phthalate and BPA containing products for
5 everything from baby feeding to dinnerware,
6 microwave cookware, not to mention personal care
7 and beauty products, such as creams, nail
8 adornments, and hair perming solution, so any
9 action to stem the use of these toxic materials
10 would greatly benefit the members of the
11 community. And the rest is in the testimony and
12 the written testimony, so go for it.

13 MIRANDA MASSIE: Good afternoon,
14 Madam Chair and Members of the Committee, my name
15 is Miranda Massie and I am the Litigation Director
16 at New York Lawyers for the Public Interest, which
17 is a civil rights nonprofit legal organization.
18 I'm also an attorney in our environmental justice
19 section. We work with communities of color and
20 low income communities around New York City on
21 environmental and environmental health issues.
22 And I'm very pleased to be here today and very,
23 very pleased for the occasion, we strongly support
24 the proposed legislation and think that it's
25 really imperative for New York City to take a

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2 stand on this, in the case of BPA, very
3 established environmental health issue.

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5 In the case of phthalates, the
6 research is at a somewhat earlier point as we
7 understand it, but there's still more than enough
8 research showing the probability of pervasive and
9 severe health effects, immunological, endocrine,
10 reproductive, neurological health impacts to take
11 action.

12

13 Because we're short on time today,
14 I won't do what I would normally do, which would
15 be to make some points repetitively for emphasis.
16 I have excellent written testimony here--and I can
17 say that because it was prepared by an absolutely
18 stupendous intern we have in our office this
19 summer who I want to acknowledge--and it goes
20 through the peer-reviewed research in--

21

22 CHAIRPERSON ARROYO: [Interposing]
23 What's the intern's name?

24

25 MIRANDA MASSIE: Her name is
26 Bethany Tolentino [phonetic], thank you, Madam
27 Chair. She's right over there in the corner,
28 hiding behind a column.

29

30 [Off mic]

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2 MIRANDA MASSIE: I'm sure she'll
3 get revenge later.

4 [Off mic]

5 MIRANDA MASSIE: Our testimony goes
6 to the health impacts, it summarizes the peer-
7 reviewed science, it summarizes the move toward
8 regulation. We're at a loss to understand some of
9 the testimony that was offered by the industry
10 panel, frankly, we just simply don't understand
11 how it relates to what we've seen in the
12 literature, but we'll let you and your staffer
13 sort through those controversies.

14 And I guess in closing, I just want
15 to address the question of whether redundancy is a
16 reason not to pass the legislation. It seems to
17 us very much the case that it's not, the federal
18 standards could change and New Yorkers deserve to
19 be protected against these toxins, regardless of
20 what the federal government does or doesn't do.

21 I would also add that New York City
22 taking a stand on this can help add to the impetus
23 to protect all of us against endocrine disruptors,
24 including, but not limited to, BPA and phthalates.
25 New York City's stand on similar issues, has had a

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2 tremendously positive impact on human health.
3 There was some talk earlier about the trans fat
4 legislation in New York City, I would also point
5 to smoking bans, that New York City can make a
6 difference nationally and internationally by
7 taking a position on these questions. And we've
8 done a lot of work around advocating for reform of
9 the Toxic Substances Control Act, which is, I'm
10 sure you know, is a federal law that severely--its
11 deficiencies are absolutely fundamental and severe
12 and it has not succeeded in protecting the
13 population against the introduction of toxic
14 chemicals for profit into the stream of commerce
15 and into our bodies. There are reform efforts now
16 underway in Congress, they look quite strong, and
17 part of the impetus behind them is because local
18 legislation and state legislation has been passed
19 and because large manufacturers and large
20 retailers have moved away from some of the
21 chemicals in question. So what you do can make a
22 very big difference even if, in technical terms,
23 some of the provisions currently overlap with
24 those in federal law. Thank you very much.

25 CHAIRPERSON ARROYO: Thank you all

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2 for your testimony and your very helpful
3 information. I think that one of the things that
4 comes out of your testimony here is understanding
5 that there is legislation pending both in the
6 Senate and in the House of Representatives to
7 introduce, quite interestingly, by New York
8 Representatives. And for the Committee, I think
9 what we can consider doing, and we need to have
10 further conversation, is possibly a resolution
11 asking for those pieces of legislation to be moved
12 forward as probably the most immediate next step
13 that we can take as a committee.

14 MIRANDA MASSIE: That would be
15 fantastic and, in fact, our office is preparing
16 that resolution for your consideration.

17 CHAIRPERSON ARROYO: Wonderful, so
18 I think we need to identify with the Committee
19 staff--if you don't already, Adira and Joe, who
20 are the ones that handle the smart technical stuff
21 for the Committee--so that we can collaborate with
22 the prime sponsor of this legislation that we're
23 here discussing today to see how we can on
24 parallel tracks take different types of action.
25 Thank you all for--yes?

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MIKE SCHADE: Can I say one thing
about that?

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CHAIRPERSON ARROYO: Sure.

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MIKE SCHADE: It's just worth
noting that there's also similar legislation
that's--there's two different federal bills that
are being considered by Congress right now, the
other bill is being considered and being pushed
toward by Senator Dianne Feinstein, who is a
senator that really pushed forward the phthalates
ban at the federal level, and there's no guarantee
that that legislation will actually move, in fact,
it's very controversial because it's being
attempted to be added to the Food Safety Bill
right now. So it's just worth noting that there's
no guarantee that the federal legislation will
move, which is really why it's really critical for
us to have protection at the municipal level here
in New York City, because that legislation is very
critical. And, of course, Congress has many other
issues that they're considering right now and,
unfortunately, this is not the number one issue
that is being considered. So I just wanted to
throw that out there.

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2 CHAIRPERSON ARROYO: My glass is
3 always half full, so I think any action that we
4 can take as a Council to help motivate legislation
5 moving forward at other levels of government is
6 always a useful tool that we have and use quite
7 often when we feel very strongly about the subject
8 at hand.

9 MIRANDA MASSIE: And what I was
10 saying, I had misunderstood you, was that we're
11 going to be presenting you with something on the
12 Toxic Substances Control Act reform, but we can
13 also work something up on phthalates as well in
14 conjunction with the center. Thank you.

15 CHAIRPERSON ARROYO: Thank you,
16 thank you all for your testimony, thank you for
17 our special guests here today for your wisdom. I
18 think we walk away from this hearing a little bit
19 better informed than we were coming into it and
20 have maybe cleared or clarified better what our
21 next steps ought to be in moving this legislation
22 forward, so thank you all. And with that, this
23 hearing is adjourned.

C E R T I F I C A T E

I, Tammy Wittman, certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature Tammy Wittman

Date June 28, 2010